

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION
FISCAL NOTE

L.R. No.: 1371-02
Bill No.: SB 363
Subject: Administrative Law; Boards, Commissions, Committees, Councils;
Administrative Rules
Type: Original
Date: March 9, 2015

Bill Summary: This proposal creates the Board of Administrative Appeals and provides that a person is entitled a hearing before the Board following a proceeding before a governmental agency.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	(Unknown, Greater than \$2,455,686)	(Unknown, Greater than \$2,867,140)	(Unknown, Greater than \$2,893,661)
Total Estimated Net Effect on General Revenue	(Unknown, Greater than \$2,455,686)	(Unknown, Greater than \$2,867,140)	(Unknown, Greater than \$2,893,661)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 15 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Insurance Dedicated	(\$95,593)	(\$110,600)	(\$111,763)
Conservation Commission Fund	(Unknown)	(Unknown)	(Unknown)
Workers Compensation Administration	(\$76,510)	(\$84,421)	(\$85,308)
Board of Administrative Appeals*	\$0	\$0	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown, Greater than \$172,103)	(Unknown, Greater than \$195,021)	(Unknown, Greater than \$197,071)

*Transfers In and Costs of approximately \$2.2 million net to \$0

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Wagner-Geyser	\$0 or (\$12,000,000)	\$0 or (\$12,000,000)	\$0 or (\$12,000,000)
Unemployment Insurance Administration	\$0 or (\$38,000,000)	\$0 or (\$38,000,000)	\$0 or (\$38,000,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (\$50,000,000)	\$0 or (\$50,000,000)	\$0 or (\$50,000,000)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	5	5	5
Insurance Dedicated	2	2	2
Workers Compensation Administration	1	1	1
Board of Administrative Appeals	18	18	18
Total Estimated Net Effect on FTE	26	26	26

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Agriculture**, the **Department of Economic Development - Office of the Public Counsel**, the **Department of Economic Development - Public Service Commission**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education**, the **Department of Health and Senior Services**, the **Department of Public Safety**, the **Department of Social Services**, the **Joint Committee on Administrative Rules**, the **Joint Committee on Public Employee Retirement**, the **Division of Legislative Research**, the **Missouri Lottery Commission**, the **Missouri Employee Consolidated Health Care Plan**, the **Missouri Ethics Commission**, the **Missouri House of Representatives**, the **Missouri Lieutenant Governor**, the **Office of Prosecution Services**, the **Missouri State Employees Retirement System**, the **MoDOT and Patrol Employees Retirement System**, the **Administrative Hearing Commission**, the **Office of the State Auditor**, the **Missouri Senate**, the **Office of the State Public Defender**, the **Office of the State Treasurer**, and the **State Tax Commission** each assume the current proposal would not fiscally impact their respective agencies.

Officials from the **Department of Revenue** state there are no statistics available to determine exactly how many additional Administrative Hearing Commission hearings will result from this proposal. If the volume is significant enough that it cannot be absorbed by existing staff, additional FTE(s) will be requested through the appropriation process.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

ASSUMPTION (continued)

Officials from the **Office of the State Courts Administrator** assume there may be some impact from this proposal but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

Officials from the **Office of the Governor (GOV)** assume this proposal establishes the Board of Administrative Appeals which includes one gubernatorial appointee. There should be no added cost to the GOV as a result of this measure. However, if additional duties are placed on the office related to appointments in other TAFP legislation, there may be the need for additional staff resources in future years.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** assume this proposal will create an additional layer of administrative review. The following is a sampling of contested cases that would be subject to review by the Board: decisions of the Administrative Hearing Commission regarding licensing refusals, revocations, etc., orders of the Director regarding examination reports through section 374.205.3(4), and orders of the Director currently subject to judicial review through section 374.055, including orders issued pursuant to contested cases under section 374.046.

It is assumed that this legislation would add another level of appeal to contested cases. The department would need one Senior Counsel FTE (\$70,000 annually) to cover the additional litigation. If the caseload is greater than anticipated the department may request additional FTE through the budget process.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** state that it is unclear if this bill will apply to all of the programs currently administered by DOLIR. However, for the purposes of this estimate, DOLIR assumes all programs will be subject to this new provision.

Division of Workers' Compensation

If this bill applies to a final determination or finding issued by the Division of Workers' Compensation (DWC) in cases involving revocation of self-insured authority or in the amount of security required by self-insured entities, it would add an additional level of review to be handled by DWC legal staff and, thereby, result in DWC needing an additional lawyer to represent it in hearings before the Board of Administrative Appeals. (1 Legal Counsel, \$53,061 annually)

ASSUMPTION (continued)

Division of Employment Security

The Division of Employment Security (DES) receives an estimated 8,000 unemployment insurance related appeals per year which are currently processed under procedures established in Chapter 288, RSMo. If decisions issued under Chapter 288 will be considered as contested cases under Chapter 536, a conformity issue will be raised due to the ability of the board to stay an existing decision.

Section 303(a)(1), of the Social Security Act (SSA), requires, as a condition for a state to receive administrative grants for its UC program, that the state law provide for "[s]uch methods of administration ... as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due." The Supreme Court's decision in *California Department of Human Resource Development v. Java*, 402 U.S. 121 (1971), interpreted this payment when due requirement to mean "at the earliest stage of unemployment that such payments [are] administratively feasible after giving both the worker and the employer an opportunity to be heard."

The Court clearly held that any suspension of benefit payments while an appeal is pending violates the requirement that states have methods of administration reasonably calculated to insure the full payment of UC when due.

If this bill applies to employment security appeals, it will create a conformity issue. Non-conformity with federal law will jeopardize the certification of Missouri's UI program. If the program fails to be certified, Missouri would lose approximately \$38 million in federal funds the state receives each year to administer the UI program. Additionally, Missouri would lose the approximately \$12 million in federal funds each year the Department of Economic Development-Division of Workforce Development uses for Wagner-Peyser reemployment services.

The FUTA imposes a 6.0% payroll tax on employers. Most employers never actually pay the total 6.0% due to credits they receive for the payment of state unemployment taxes and for paying reduced rates under an approved experience rating plan. FUTA allows employers tax credits up to a maximum of 5.4% against the FUTA payroll tax if the state UI law is approved by the Secretary of Labor. However, if this bill causes Missouri's program to be out of compliance or out of conformity, Missouri employers would pay the full 6.0%, or approximately an additional \$889 million per year.

ASSUMPTION (continued)

Office of General Counsel

The Office of the General Counsel in the Department of Labor and Industrial Relations provides legal staff for appeals of DES unemployment tax decisions and in certain types of benefits cases (including overpayments and Trade Act matters). It also generally represents the State Board of Mediation in appeals from its decisions and expects that it will be called on occasionally to represent MCHR in appeals from its decisions that will be going to the new administrative review body under this bill. The additional layer of appeals added by this bill will require two FTE (Legal Counsel) to prepare cases, complete briefings with staff and experts, present arguments, and manage cases through the additional processes. Standard per FTE expense and equipment is also requested. A majority of the two FTE would be related to DES cases. (2 Legal Counsel, \$61,857 annually)

If federal funding supporting the DES administration is lost due to the federal conformity issue discussed above, DOLIR is uncertain about the distribution of unemployment benefits in Missouri. To the extent that appeals regarding unemployment decisions would continue, requested staffing would still be needed.

With the uncertainty if this proposal would put Missouri out of compliance, **Oversight** will reflect the possibility as \$0 (not a compliance issue) to a loss of federal funds as estimated by DOLIR.

Officials from the **Attorney General's Office (AGO)** assume this proposal creates a layer of hearings wherein the AGO is required to represent various government agencies. The AGO assumes that any potential costs arising from this proposal cannot be absorbed with existing resources. Under this proposal, the AGO anticipates that its caseload would increase to justify the addition of at least one FTE, AAG 1, \$44,000 annually. The AGO may seek additional appropriations if the proposal results in a significant increase in the workload not already anticipated.

Officials from the **Department of Mental Health (DMH)** assume this proposal adds an additional layer of non-legal oversight of legal proceedings, allowing the parties to reargue their case in another, non-legal, forum if dissatisfied with the Commission's decision. The Board does not appear bound by, or limited to, the evidence presented at the Administrative Hearing Commission. New arguments or new evidence could be brought before the Board, even if such evidence were excluded before the Commission.

ASSUMPTION (continued)

The impact to DMH is that it would further delay final decisions on appeals of personnel actions. This could also result in higher back pay amounts to discharged employees if the Board reinstated the employee. It is projected that the costs associated with this legislation would be \$235,949 for the first year of its implantation.

Costs were based on the assumption that two additional attorneys would be required for the anticipated increase in legal proceedings. (2 Attorneys, \$89,913 each annually)

Officials from the **Department of Corrections (DOC)** assume this legislation adds an additional layer of review to the administrative appeal process. This could result in additional costs for attorney time, costs of depositions and transcripts, and staff time participating in the appeal. It could also result in longer waits for final decisions which could significantly increase the amount of back pay owed if a decision is overturned.

The DOC has averaged approximately 12 cases decided by the Administrative Hearing Commission over the past several years. Depending on the number of appeals filed, this legislation would have an impact on the department. However, the exact cost is unknown as the DOC does not know how many of those cases would be appealed at this new level.

Depending on the number of appeals and the additional length of time required to work on the appealed cases, the DOC might also require the services of one additional attorney.

In summary, the fiscal impact of this legislation would be (Unknown). The additional cost could be significant depending on the number of cases appealed and the increased amount of time accrued as back pay due to the additional step in the administrative hearing process.

ASSUMPTION (continued)

Officials from the **Office of Administration (COA)** assume that the Board of Administrative Appeals (BAA) would require 18 FTEs, including the five board members.

- 5 board members: \$106,625 each (based on salaries of PSC members)
- 6 technical advisory staff as required by section 536.265.1 (positions chosen based on areas of expertise noted in the legislation)
 - 1 Fiscal & Administrative Manager: \$62,370
 - 3 Legal Counsels: \$56,600
 - 1 Accounting Specialist III: \$56,394
 - 1 Economist (OA/Revenue): \$63,756
- 5 personal advisors as required by section 536.265.2
 - Designated Principal Assistants: \$78,103 each (based on average annual salary of DPAs at the PSC)
- 1 Senior Office Support Assistant - Clerical: \$29,334
- 1 Senior Office Support Assistant – Stenography: \$30,648

Given the number of administrative hearings conducted by state agencies and the Administrative Hearing Commission and their potential to be appealed, the Office of Administration assumes that the board members will need to be full-time, paid employees themselves. As this legislation appears to be closely modeled after that of the Public Service Commission whose commissioners are paid \$106,625, the Office of Administration has adopted this pay structure for the Board of Administrative Appeals. If these board members were not paid, the fiscal note would need to be reduced by \$675,314 for salaries and fringes in FY16 and \$818,480 in every fiscal year thereafter.

Both the PSC and the AHC make use of stenography services to record their proceedings. The Office of Administration assumes the Board of Administrative Appeals will also require stenography services. The PSC has spent an average of \$54,648 over the last five fiscal years on stenography contracts, while the AHC has 1.75 FTE designated for stenography services.

The Office of Administration assumes that the Board of Administrative Appeals will hold hearings in a conference room of an existing state office building and therefore has assumed no associated meeting costs.

Oversight notes that BAA costs are to be paid from the Board of Administrative Appeals Fund created by this proposal. Oversight assumes that sufficient funds will be transferred from the General Revenue Fund to cover BAA administration.

ASSUMPTION (continued)

Officials from the **Department of Natural Resources (DNR)** state that during FY10 through FY14, the department on average has expended approximately \$15,000 a year directly to the Administrative Hearing Commission to cover their staff costs for work related to environmental appeals. The department assumes 50% of appeal cases would move forward on appeal to the Board of Administrative Appeals created under this proposal. As the department does not have additional fee fund appropriation to support this effort, the department would need to request General Revenue appropriation (\$8,000).

This amount does not include the department's additional appeal costs such as attorney's fees and other court services.

In a more specific example:

- DNR utilizes an average of 100 staff hours to respond to an appeal of a surface mining operation permit to the Administrative Hearing Commission (AHC).
- The average supporting E&E costs to DNR for an appeal of a surface mining operation permit to the AHC is \$25,000.
- DNR permits, denies, suspends, or revokes approximately 10 surface mining permits each year.

Typically 50% of the permits, denials, suspensions, revocations appeal to the AHC each year. If we assume that the same number will be appealed to the new board as well, and the costs are the same as those for the AHC, the estimated personal service cost to DNR would be \$13,000. The estimated E&E cost would be \$125,000. The average total impact estimated for one year would be \$138,000.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
GENERAL REVENUE FUND			
<u>Transfer Out</u> - to Board of Administrative Appeals Fund	(\$1,855,350)	(\$2,176,942)	(\$2,197,663)
<u>Costs - DOLIR</u>			
Salaries	(\$103,095)	(\$124,951)	(\$126,201)
Fringe Benefits	(\$53,615)	(\$64,981)	(\$65,631)
Equipment and Expenses	(\$18,590)	(\$5,915)	(\$6,062)
<u>Total Costs - DOLIR</u>	<u>(\$175,300)</u>	<u>(\$195,847)</u>	<u>(\$197,894)</u>
FTE Change - DOLIR	2 FTE	2 FTE	2 FTE
<u>Costs - AGO</u>			
Salaries	(\$36,667)	(\$44,440)	(\$44,884)
Fringe Benefits	(\$19,069)	(\$23,111)	(\$23,342)
Equipment and Expense	(\$18,351)	(\$11,994)	(\$12,293)
<u>Total Costs - AGO</u>	<u>(\$74,087)</u>	<u>(\$79,545)</u>	<u>(\$80,519)</u>
FTE Change - AGO	1 FTE	1 FTE	1 FTE
<u>Costs - DMH</u>			
Salaries	(\$149,855)	(\$181,624)	(\$183,441)
Fringe Benefits	(\$77,932)	(\$94,454)	(\$95,398)
Equipment and Expenses	(\$8,162)	(\$728)	(\$746)
<u>Total Costs - DMH</u>	<u>(\$235,949)</u>	<u>(\$276,806)</u>	<u>(\$279,585)</u>
FTE Change - DMH	2 FTE	2 FTE	2 FTE
<u>Costs - DOC</u>			
Unknown increase of appeals	(Unknown)	(Unknown)	(Unknown)
<u>Costs - DNR</u>			
Salaries	(\$10,833)	(\$13,000)	(\$13,000)
Equipment and Expenses	(\$104,167)	(\$125,000)	(\$125,000)
<u>Total Costs - DNR</u>	<u>(\$115,000)</u>	<u>(\$138,000)</u>	<u>(\$138,000)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Unknown, Greater than \$2,455,686)</u>	<u>(Unknown, Greater than \$2,867,140)</u>	<u>(Unknown, Greater than \$2,893,661)</u>
Net Estimated FTE Change on General Revenue Fund	5 FTE	5 FTE	5 FTE

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2016 (10 Mo.)	FY 2017	FY 2018
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INSURANCE DEDICATED

<u>Costs - DIFP</u>			
Salaries	(\$58,333)	(\$70,700)	(\$71,407)
Fringe benefits	(\$29,753)	(\$36,061)	(\$36,421)
Equipment and Expense	(\$7,507)	(\$3,839)	(\$3,935)
<u>Total Costs - DIFP</u>	<u>(\$95,593)</u>	<u>(\$110,600)</u>	<u>(\$111,763)</u>
FTE Change - DIFP	1 FTE	1 FTE	1 FTE

ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND	<u>(\$95,593)</u>	<u>(\$110,600)</u>	<u>(\$111,763)</u>
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Estimated Net FTE Change on the Insurance Dedicated Fund	2 FTE	2 FTE	2 FTE
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CONSERVATION COMMISSION FUND

<u>Costs - Unknown increase of appeals</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT TO THE CONSERVATION COMMISSION FUND	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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**WORKERS COMPENSATION
ADMINISTRATION FUND**

<u>Costs - DOLIR</u>			
Salaries	(\$44,218)	(\$53,592)	(\$54,128)
Fringe Benefits	(\$22,996)	(\$27,871)	(\$28,149)
Equipment and Expenses	(\$9,296)	(\$2,958)	(\$3,031)
<u>Total Costs - DOLIR</u>	<u>(\$76,510)</u>	<u>(\$84,421)</u>	<u>(\$85,308)</u>
FTE Change - DOLIR	1 FTE	1 FTE	1 FTE

ESTIMATED NET EFFECT ON WORKERS COMPENSATION ADMINISTRATION FUND	<u>(\$76,510)</u>	<u>(\$84,421)</u>	<u>(\$85,308)</u>
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Estimated Net FTE Change on the Workers Compensation Administration Fund	1 FTE	1 FTE	1 FTE
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<u>FISCAL IMPACT - State Government</u> (continued)	FY 2016 (10 Mo.)	FY 2017	FY 2018
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**BOARD OF ADMINISTRATIVE
 APPEALS FUND**

<u>Income</u> - Transfer from General Revenue Fund	\$1,855,350	\$2,176,942	\$2,197,663
<u>Costs</u> - COA			
Salaries	(\$1,124,806)	(\$1,363,265)	(\$1,376,897)
Fringe Benefits	(\$584,955)	(\$708,966)	(\$716,055)
Equipment and Expense	(\$66,839)	(\$10,211)	(\$10,211)
Other Fund Costs	(\$78,750)	(\$94,500)	(\$94,500)
<u>Total Costs</u> - COA	<u>(\$1,855,350)</u>	<u>(\$2,176,942)</u>	<u>(\$2,197,663)</u>
FTE Change - COA	18 FTE	18 FTE	18 FTE

NET EFFECT ON BOARD OF ADMINISTRATIVE APPEALS FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FEDERAL FUNDS

<u>Loss</u> - Wagner-Peyser Funding	\$0 or (\$12,000,000)	\$0 or (\$12,000,000)	\$0 or (\$12,000,000)
<u>Loss</u> - Unemployment Insurance Funding	<u>\$0 or</u> <u>(\$38,000,000)</u>	<u>\$0 or</u> <u>(\$38,000,000)</u>	<u>\$0 or</u> <u>(\$38,000,000)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0 or</u> <u>(\$50,000,000)</u>	<u>\$0 or</u> <u>(\$50,000,000)</u>	<u>\$0 or</u> <u>(\$50,000,000)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small businesses wishing to make an appeal could be impacted by this proposal.

FISCAL DESCRIPTION

This proposal creates the Board of Administrative Appeals. The Board shall consist of five voting non-attorney members. Two members shall be appointed by the Speaker of the House of Representatives, two appointed by the President Pro Tempore of the Senate, and one member appointed by the Governor with the advice and consent of the Senate, all to serve a term of six years.

The Board shall have an independent technical advisory staff who shall give advice and assistance to board members on technical matters within their respective areas of expertise.

Any person aggrieved in a contested case before a government agency may file an appeal with the Board of Administrative Appeals and is entitled to a hearing after exhausting all other administrative remedies. Decisions rendered by the Board are binding and subject to judicial review.

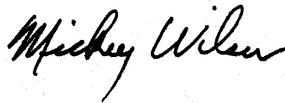
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office
Department of Agriculture
Department of Economic Development
Department of Elementary and Secondary Education
Department of Higher Education
Department of Health and Senior Services
Department of Insurance, Financial Institutions and Professional Registration
Department of Mental Health
Department of Natural Resources
Department of Corrections
Department of Labor and Industrial Relations
Department of Revenue
Department of Public Safety
Department of Social Services
Office of the Governor
Joint Committee on Administrative Rules
Joint Committee on Public Retirement
Legislative Research
Missouri Lottery Commission
Missouri Consolidated Health Care Plan
Missouri Ethics Commission
Missouri House of Representatives
Missouri Lieutenant Governor
LO:LR:OD

SOURCES OF INFORMATION (continued)

Office of Prosecution Services
Missouri State Employees Retirement System
MoDOT and Patrol Employees Retirement System
Office of Administration
Administrative Hearing Commission
Office of the State Courts Administrator
Office of the State Auditor
Missouri Senate
Office of the Secretary of State
Office of the State Public Defender
Office of the State Treasurer
State Tax Commission



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